

## **EXHIBIT C**

1                   UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MASSACHUSETTS

3                   MDL Docket No. 1629  
4                   Master File No. 04-10981

5        \*  
6    IN RE: NEURONTIN MARKETING                           \*  
7        SALES PRACTICES AND                                \*  
8        PRODUCTS LIABILITY LITIGATION                    \*  
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9       THIS DOCUMENT RELATES TO:                         \*  
10      \*  
11      \*  
12      DAILY TRANSCRIPT OF PRELIMINARY                  \*  
13      JURY INSTRUCTIONS, OPENING                        \*  
14      STATEMENTS and THE EVIDENCE                        \*  
15      (Volume 2)    \*

16                   BEFORE: The Honorable William G. Young,  
17    \*  
18    \*  
19    \*  
20    \*  
21    \*  
22    \*  
23    \*  
24    \*  
25    \*

APPEARANCES:

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March 31, 2010

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1 THE CLERK: All rise. Court is in session, please  
2 be seated.

3 Calling Civil Action 07-11428, Shearer v. Pfizer.  
4 Oh, sorry, Judge.

5 MR. ROSENKRANZ: Good morning, your Honor.

6 THE COURT: Good morning, counsel. Would you come  
7 over here to the side bar, this doesn't have to be on the  
8 record.

9 (Side bar conference off the record.)

10 THE COURT: We'll stand in recess until we have the  
11 jurors. If they're back there we'll start right at nine  
12 o'clock. We'll recess.

13 THE CLERK: 11 rise. Court is in recess.

14 (Recess.)

15 THE CLERK: 11 rise for the jury.

16 (Whereupon the jury entered the courtroom.)

17 THE CLERK: Court is in session, please be seated.

18 THE COURT: Good morning, folks.

19 THE CLERK: If you would move down one. Thank you.

20 In the second row. Right. Okay, great.

21 THE COURT: My name is Bill Young. I'm the judge  
22 who is assigned to preside in this session of the Court.  
23 You've already met my colleague, Magistrate Judge Bowler,  
24 who was gracious enough to conduct the impanelment of the  
25 jury, but you're stuck with me for the actual trial of the

## 1 I N D E X

2 WITNESS: DIRECT CROSS REDIRECT RECROSS

3 DAVID FRANKLIN

4 By Mr. London 46 150

5 By Mr. Ohlemeyer 120

6 FOR IN

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9 2020-1 Neurontin Indications ..... 83

10 6000 Dr. McCormick Regarding Neurontin . 100

11 5655 Voice Mail Tape ..... 107

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13 5150 Neurontin Marketing Assessment .. 117

1 case. That's my responsibility.

2 You were sworn as jurors. Mr. Newman, the Court  
3 appoints you foreman of this jury.

4 Let me take a few minutes to explain in detail  
5 exactly what's going to happen in this case and to tell you  
6 a little bit about what your function is in this case  
7 because you are the most important people in the courtroom.

8 At this time, in this courtroom, there are thirteen  
9 judges. You twelve men and women are the judges of the  
10 facts. You are the only judges of the facts. I'm the judge  
11 of the law.

12 Now, let's consider a moment what that means to be  
13 judges of the facts. This is informal, but I want to ask  
14 you this: Do any of come from towns where they have direct  
15 town meeting, everyone can get, go to town meeting and vote?  
16 Does anyone? Thank you. Thank you.

17 When I'm picking a jury that's the first thing I  
18 ask of the whole group. And you see you people who come  
19 from towns where they have direct town meeting, you have the  
20 experience of direct democracy, the people themselves ruling  
21 directly. I don't come from such a town. But in those  
22 towns everybody can go to town meeting. Everybody, if  
23 you're 18 years of age or older, you can go to town meeting  
24 and you 11 can vote. You vote whether to buy another fire  
25 engine, raise the teachers' salaries, close the town dump.

1 A No. No.  
 2 Q Okay.  
 3 A I didn't meet with them before the deposition either.  
 4 Q But you met with them yesterday?  
 5 A They asked for time.  
 6 Q Now, Dr. Franklin, Mr. Franklin, the doctors you met  
 7 with in the four months you were at Parke-Davis seemed to  
 8 you to be typically hard working, critical thinking doctors,  
 9 didn't they?  
 10 A Yes.  
 11 Q They were a cross-section of the kind of doctors that  
 12 you would find in an area like this, right?  
 13 A Yes.  
 14 Q Trying their best to help their patients?  
 15 A Yes.  
 16 Q Right.  
 17 A And at the time that you joined Parke-Davis you  
 18 knew, didn't you, that Pfizer didn't invent Neurontin,  
 19 right?  
 20 A I think it came from a Japanese company or -- I don't --  
 21 I don't recall specifically the origins of Neurontin.  
 22 Q You learned, though, that it was approved by the FDA for  
 23 the adjunctive treatment of epileptic seizures in about  
 24 1993; isn't that right?  
 25 A That's when it was approved, yes.

1 Q And you later learned that it was approved by the FDA in  
 2 2002 to treat pain associated with post-herpetic neurology,  
 3 right?  
 4 A Yeah, that was long after I left the company.  
 5 Q And referring to Exhibit 6000, do you know --  
 6 A What page number is 6000.  
 7 Q No, it's the time line I showed you.  
 8 A All right.  
 9 Q Do you know what the medical officer's role is at the  
 10 FDA in reviewing a New Drug Application?  
 11 A I think they're the people that, the medical officer at  
 12 the FDA I believe is the individual who then reviews 11 of  
 13 the data analysis, gets their expert, sometimes they'll have  
 14 committees, expert committees, and that sort of stuff, and  
 15 they review all the data, and that's the person who makes  
 16 the final set of decisions or group of people that make the  
 17 final set of decisions.  
 18 Q Do you know who the medical officer was at the FDA who  
 19 reviewed the Neurontin application prior to its approval in  
 20 1993?  
 21 A I believe that we saw it earlier, it was something  
 22 McCormick.  
 23 Q McCormick, right.  
 24 A And am I correct, let me ask you to read a portion  
 25 of Exhibit 6000 for us. The February 14th entry on that.

1 Can you read that for us.  
 2 A Yes. Out loud?  
 3 Q Yes, please.  
 4 A In the documents that I reviewed, both in my  
 5 responsibility as a medical officer in epilepsy and also in  
 6 my review of the Neurontin application for post-herpetic  
 7 neuralgia, I did not see any -- and this is boldfaced -- I  
 8 did not see anything that would suggest an increased risk of  
 9 suicidality.  
 10 Q And who is that statement attributed to?  
 11 A It's February 14th, 2008, the McCormick deposition.  
 12 Q And she to your knowledge was the medical officer who  
 13 reviewed the Neurontin applications?  
 14 A Yes.  
 15 Q Thank you.  
 16 A Yes.  
 17 Q Now, to get a drug approved you have to submit  
 18 controlled studies, don't you?  
 19 A Yes.  
 20 Q One of the slides Mr. London showed you had a  
 21 bullet point about anecdotal studies?  
 22 A Yes.  
 23 Q Is there a difference between a controlled study and an  
 24 anecdotal study?  
 25 A Yes, absolutely.

1 Q It's a big difference, isn't it?  
 2 A Giant difference. 11 the difference.  
 3 Q Because a controlled study takes two groups of people  
 4 that seem, that are identical and tries to compare what  
 5 happens to them when one takes a drug and one takes a  
 6 placebo or sugar pill, right?  
 7 A Not in 11 circumstances is there a placebo. But in  
 8 principle, yes.  
 9 Q An anecdotal report is an observation of something that  
 10 occurs in somebody at a particular point in time?  
 11 A That's right.  
 12 Q And if you're trying to prove something the more  
 13 reliable evidence is the controlled study, not the anecdotal  
 14 report?  
 15 A I would argue that the anecdotal report is not evidence.  
 16 Q Now, I don't want to belabor this --  
 17 A It's the lowest form of evidence.  
 18 Q The anecdotal report?  
 19 A Yes.  
 20 Q And that's because there might be other explanations for  
 21 what you are observing?  
 22 A Exactly.  
 23 Q Now, Mr. London spent some time with this, I don't want  
 24 to belabor it, but there's a difference between an off-label  
 25 prescription and off-label promotion, right?